TOWN COUNCIL WORK SESSION
Monday, November 4, 2019 @ 7:00 p.m.
Town Hall Council Chambers

TOWN/STAFF RELATED ITEMS
1. Republic Services Presentation
2. Safety Plan for Kerfoot Avenue – *Director of Public Works*
3. Review of Blighted Structures – *Town Attorney*

COUNCIL/MAYOR RELATED ITEMS
4. UFAC Terms Expire
5. Discussion Pertaining to the Memorandum of Agreement (MOA)/Amendment to the Voluntary Settlement Agreement with Warren County Pertaining to the Area known as Crooked Run West
6.Discussion Pertaining to the Town's Water Policy *(Town Code Chapter 134-1.C.)*
7.Open Discussion
8.CLOSED MEETING – Personnel and EDA Lawsuit

Motion to Go Into Closed Meeting

I move that Council convene and go into Closed Meeting for the following purposes:

(1) Discussion, and consideration of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of Town Council, including an exit interview of Town Manager and what Town Council would be considering in a future Town Manager, pursuant to Section 2.2-3711. A. 1. of the Code of Virginia.

(2) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, namely, the Town's lawsuit against the Economic Development Authority, where such consultation or briefing in Open Meeting would adversely affect the negotiating or litigating posture of the public body; "probable litigation" meaning litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party; pursuant to Section 2.2-3711. A. 7. of the Code of Virginia.

Motion to Certify Closed Meeting at its Conclusion [At the conclusion of the Closed Meeting, immediately re-convene in open meeting and take a roll call vote on the following:]

I move that Council certify that to the best of each member's knowledge, as recognized by each Council member's affirmative vote, that only such public business matters lawfully exempted from Open Meeting requirements under the Virginia Freedom of Information Act as were identified in the motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Council, and that the vote of each individual member of Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

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Work Session Agenda Form

Item # 2

DATE: November 4, 2019

AGENDA ITEM: Kerfoot Avenue Safety Improvements

SUMMARY: The Public Works Director will provide a presentation of installing safety improvements along Kerfoot Avenue and the cost associated with this proposed project. This presentation will show the addition of two raised crosswalks along Kerfoot Avenue at the Soccer Complex to reduce traffic speeds and make crossing the street safer for pedestrians. This presentation also recommends making the intersection of Salem Avenue and Kerfoot Avenue a four way stop to help slow the traffic down on this section of Kerfoot Avenue. There will be a cost break down showing the price of these items as well as adding curb and gutter and sidewalk along the soccer field side of Kerfoot Avenue. The presentation will show information regarding the existing power poles, fencing and trees that would have to be relocated for the installation of sidewalk.

BUDGET/FUNDING: TBD

STAFF RECOMMENDATION: Public Works Director will be present to answer any questions or concerns.

Work Session

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Work Session Agenda Form **Item # 3**

DATE:

Work Session

AGENDA ITEM: Consideration of Spot Blight Abatement Ordinance.

SUMMARY: Town Councilman Gary Gillespie brought to the attention of staff the ordinance used by the County of Loudoun and Town of Leesburg, a copy of which is attached, to abate (remedy) "spot blight". It appears this is a successful program in those jurisdictions. Under this program as used by Loudoun and Leesburg, and in accordance with State Code, "blighted property" is individual property which endangers the public's health, safety, or welfare because a structure or improvement violates minimum health and safety standards. "Spot blight" means an ***individual*** structure or improvement that is blighted. Under this ordinance, and in accordance with State Code, the Town Manager, or his designee, will make a preliminary determination of blighted property. Notice is given to the property owner. The owner shall have 30 days to respond in writing with a spot blight abatement plan prepared by the owner to address (fix) the blighted property within a reasonable time thereafter. If the owner does not respond within the 30 day period with a plan acceptable to the Town, the Town Manager or his designee shall prepare a spot abatement plan acceptable to the Town, and shall request Town Council to pass an ordinance to declare that the property constitutes a ***nuisance.*** Following a public hearing, Town Council can declare the individual blighted property to constitute a nuisance. Upon adoption of the ordinance, the Town Manager or his designee may cause the blighted structure or improvement to be abated (fixed), razed (torn down), or removed, or even condemned (by eminent domain) in accordance with the spot blight abatement plan. Any costs incurred by the Town for the removal or abatement shall be a lien on the blighted property, shall be recorded in the land records, and shall be treated as a tax lien, and if not paid by the owner, the property may be sold to satisfy the lien.

This spot blight abatement program is authorized by Va. Code § 36-49.1:1., attached.

This is a somewhat similar program to that currently authorized by Town Code 9-303, attached, which is allowed by Va. Code § 15. 2-906. However, proceeding under the Town ordinance requires the determination of blight to be made by the Building Official, and does not allow condemnation. The Loudoun County/Leesburg program (spot blight abatement program) allows the determination to be made by the Town Manager or his designee and Town Council, and also allows for condemnation of the blighted property, where Town Council might deem that appropriate.

BUDGET/FUNDING: Unknown, but anticipated costs of advertisements of public hearing, and staff costs to inspect properties and prepare spot blight abatement plans.

STAFF RECOMMENDATION: Staff recommends identifying a blighted property and then attempting a spot abatement of the property on a trial basis.

Loudoun County CODE

650.01 PURPOSE.

The purpose of this chapter is to provide for the abatement of blighted property that threatens the public's health, safety, and/or welfare.

(Ord. 17-10. Passed 10-11-17.)

650.02 DEFINITIONS.

As used in this chapter, unless otherwise required by the context:

(a) "Blighted property" means any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards.

(b) "County" means the County of Loudoun, Virginia.

(c) "Farm building or structure" means a legally established building or structure, primarily used for agricultural, horticultural, or animal husbandry purposes as defined by the Zoning Ordinance, and located on a parcel that is either subject to a Conservation Farm Management Plan approved by the Loudoun County Soil and Water Conservation District or the U.S. Natural Resources and Conservation Service, or enrolled in the Land Use Assessment Program under the Agricultural use category.

(d) "Spot blight" means a structure or improvement that is a blighted property as defined in this chapter.

(e) "Spot blight abatement plan" means the written plan prepared by the owner(s) of record of any blighted property to address spot blight, or if the owner(s) of record of such blighted property fail to respond as provided for in this chapter, the written plan prepared by the County Administrator, or designee, to abate, raze, or remove the blighted property.

(Ord. 17-10. Passed 10-11-17.)

650.03 SPOT BLIGHT ABATEMENT AUTHORIZED.

The Board of Supervisors is authorized under Code of Virginia §§ 36-49.1:1.G and 15.2-900, as amended, to declare any blighted property to constitute a nuisance, which declaration shall be made by ordinance adopted by the Board of Supervisors specific to such blighted property, and thereupon abate, raze, or remove such blighted property.

(Ord. 17-10. Passed 10-11-17.)

650.04 INSPECTIONS.

Upon receipt of a complaint that any individual commercial, industrial, or residential structure or improvement is spot blight, the County Administrator, or designee, shall be authorized to inspect such structure or improvement and make a preliminary determination that such structure or improvement is blighted property.

(Ord. 17-10. Passed 10-11-17.)

650.05 EXEMPTIONS.

The following structures and improvements shall be exempt from this chapter:

(a) Farm buildings or structures.

(b) Structures designated under the Loudoun County Zoning Ordinance as being located within and contributing to a Historic and Cultural Conservation District or Historic Site District.

(c) Structures listed or eligible for listing in the Virginia Landmarks Register or National Register of Historic Places, or as a contributing resource to a Virginia Landmarks Register or National Register of Historic Places listed or eligible Historic District.

(Ord. 17-10. Passed 10-11-17.)

650.06 PROCEDURE FOR DECLARATION OF BLIGHTED PROPERTY.

(a) Should the County Administrator, or designee, make a preliminary determination of blighted property in accordance with this chapter, notice shall be sent to the owner(s) of record of the blighted property at the last known address of such owner(s) as shown on the current real estate tax assessment records, specifying the reasons why the property is a blighted property. Such notice shall be sent by Certified Mail and First Class Mail to said owner(s), and also shall be posted on the blighted property. The owner(s) of record shall have thirty (30) days from the date such notice is sent in which to respond in writing with a spot blight abatement plan to address the blighted property within a reasonable time.

(b) If the owner(s) of record fail to respond within the thirty (30) day period with a written spot blight abatement plan that is acceptable to the County Administrator, or designee, the County Administrator, or designee, shall prepare a spot blight abatement plan for the blighted property, and shall request that the Board of Supervisors direct the County Administrator, or designee, to prepare an ordinance to declare that said blighted property constitutes a nuisance.

(c) If directed to prepare such ordinance by the Board, the County Administrator, or designee, shall provide notice of such ordinance in accordance with Code of Virginia §

15.2-1427, as amended, and bring such ordinance forward for public hearing, Board of Supervisors' consideration, and passage. In addition to the notice required by Code of Virginia § 15.2-1427, as amended, written notice of such ordinance and public hearing, together with a copy of the spot blight abatement plan, shall be sent to the owner(s) of record of the blighted property at the last known address of such owner(s) as shown on the current real estate tax assessment records and shall be posted on the blighted property.

(d) If the Board of Supervisors adopts the ordinance, the spot blight abatement plan shall become effective and the County Administrator, or designee, may implement the spot blight abatement plan.

(Ord. 17-10. Passed 10-11-17.)

650.07 PROPERTY LIENS.

If the ordinance is adopted by the Board of Supervisors, any costs incurred by the County under the spot blight abatement plan for the removal or abatement of the blighted property shall be a lien on the blighted property and such lien shall bear interest at the legal rate of interest established in Code of Virginia § 6.2-301, as amended, beginning on the date that such removal or abatement is completed through the date on which the lien is paid. Said lien may be recorded as a lien among the land records of the Circuit Court of Loudoun County, which lien shall be treated in all respects as a tax lien and enforceable in the same manner as provided in Code of Virginia Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.103965 et seq.) of Chapter 39 of Title 58.1. as amended.

(Ord. 17-10. Passed 10-11-17.)

Text in effect from and after July 1, 2009

Title 36 Housing Chap. 1 Housing Authorities Law, §§ 36-1 — 36-55.6 Art. 7 Redevelopment Projects, §§ 36-48 — 36-55

§ 36-49.1:1. Spot blight abatement authorized; procedure. —

A. Notwithstanding any other provision of this chapter, an authority, or any locality, shall have the power to acquire or repair any blighted property, as defined in § 36-3, whether inside or outside of a conservation or redevelopment area, by purchase or through the exercise of the power of eminent domain provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, and, further, shall have the power to hold, clear, repair, manage or dispose of such property for purposes consistent with this chapter. In addition, the authority and locality shall have the power to recover the costs of any repair or disposal of such property from the owner or owners of record, determined in accordance with subsection B of § 36-27. This power shall be exercised only in accordance with the procedures set forth in this section.

B. The chief executive or designee of the locality or authority shall make a preliminary determination that a property is blighted in accordance with this chapter. It shall send notice to the owner or owners of record determined in accordance with subsection B of § 36-27, specifying the reasons why the property is blighted. The owner or owners of record shall have 30 days from the date the notice is sent in which to respond in writing with a spot blight abatement plan to address the blight within a reasonable time.

C. If the owner or owners of record fail to respond within the 30-day period with a written spot blight abatement plan that is acceptable to the chief executive of the agency, authority or locality, the agency, authority or locality may request the locality to declare the property as blighted, which declaration shall be by ordinance adopted by the governing body.

D. No spot blight abatement plan shall be effective until notice has been sent to the property owner or owners of record and an ordinance has been adopted by the local governing body. Written notice to the property owner shall be sent by regular mail to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such spot blight abatement plan prepared by the agency, authority, or locality. If the repair or other disposition of the property is approved, the authority, agency, or locality may carry out the approved plan to repair or acquire and dispose of the property in accordance with the approved plan, the provisions of this section, and the applicable law.

E. If the ordinance is adopted by the governing body of the locality, the locality shall have a lien on all property so repaired or acquired under an approved spot blight abatement plan to recover the cost of (i) improvements made by such locality to bring the blighted property into compliance with applicable building codes and (ii) disposal, if any. The lien on such property shall bear interest at the legal rate of interest established in § 6.2-301, beginning on the date the repairs are completed through the date on which the lien is paid. The lien authorized by this subsection may be recorded as a lien among the land records of the circuit court, which lien shall be treated in all respects as a tax lien and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. The governing body may recover its costs of repair from the owner or owners of record of the property when the repairs were made at such time as the property is sold or disposed of by such owner or owners. If the property is acquired by the governing body through eminent domain, the cost of repair may be recovered when the governing body sells or disposes of the property. In either case, the costs of repair shall be recovered from the proceeds of any such sale.

F. Notwithstanding the other provisions of this section, unless otherwise provided for in Title 36, if the blighted property is occupied for personal residential purposes, the governing body, in approving the spot blight abatement plan, shall not acquire by eminent domain such property if it would result in a displacement of the person or persons living in the premises. The provisions of this subsection shall not apply to acquisitions, under an approved spot blight abatement plan, by any locality of property which has been condemned for human habitation for more than one year. In addition, such locality exercising the powers of eminent domain in accordance with Title 25.1, may provide for temporary relocation of any person living in the blighted property provided the relocation is within the financial means of such person.

G. In lieu of the acquisition of blighted property by the exercise of eminent domain, and in lieu of the exercise of other powers granted in subsections A through H, any locality may, by ordinance, declare any blighted property as defined in § 36-3 to constitute a nuisance, and thereupon abate the nuisance pursuant to § 15.2-900 or § 15.2-1115. Such ordinance shall be adopted only after written notice by certified mail to the owner or owners at the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records. If the owner does not abate or remove the nuisance and the locality abates or removes the nuisance at its expense, the costs of the removal or abatement of the nuisance shall be a lien on the property and such lien shall bear interest at the legal rate of interest established in § 6.2-301, beginning on the date the removal or abatement is completed through the date on which the lien is paid.

H. The provisions of this section shall be cumulative and shall be in addition to any remedies for spot blight abatement that may be authorized by law. (1994, 2nd Sp. Sess., cc. 5, 10; 1995, cc. 702, 827; 1996, c. 847; 1997, c. 572; 1998, cc. 690, 898; 1999, cc. 39, 410, 418; 2001, c. 482; 2003, c. 940; 2006, c. 784; 2007, c. 763; 2009, cc. 181, 551.)

History

B. No permit as required by the Town by ordinance or regulation shall be issued unless the fee prescribed for the service shall have been paid, nor shall any amendment to such a permit be approved until any additional fee, if any, due to an increase in the estimated cost of the building or structure, shall also have been paid.

(Added Entire Section 10-22-18-Effective Upon Passage)

9-303 AUTHORITY TO REQUIRE REMOVAL, REPAIR, ETC., OF BUILDING AND OTHER STRUCTURES

A. Owners of real property within the Town shall remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the Town.

B. If an owner fails to do so, the building official may send the owner notice of his or her obligations under this section. Such notice shall be:

1. In writing, mailed by certified mail, return receipt requested, sent to the last known address of the property owner; and

2. Published in a newspaper having general circulation in the locality in accordance with the applicable provisions of Code of Virginia §§ 15.2-1426, 15.2-1427.

C. The Town, through its own agents or employees, may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the Town if the owner and lien holder of the property fails to do so within thirty (30) days following the later of the return of the certified mail receipt or newspaper publication. However, if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice, the Town may take action to prevent unauthorized access to the building within seven days of such notice. Repair of the structure may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings.

D. In the event the Town, through its own agents or employees removes, repairs or secures any building, wall or any other structure pursuant to this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the Town as taxes and levies are collected.

E. Every charge authorized by this section which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided Code of Virginia (1950), Title 58.1, Chapter 39, Articles 3 and 4, as amended.

F. The remedies provided by this section are in addition to, and not in lieu of, any other remedy provided by general law or by the Building Code.

(Added Entire Section 10-22-18-Effective Upon Passage)

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Work Session Agenda Form

Item # 4

DATE: November 4, 2019

Work Session

AGENDA ITEM: Urban Forestry Advisory Commission (UFAC) Terms Expire

SUMMARY: Cary Hulse and David B. Means terms expire on the Urban Forestry Advisory Commission (UFAC) December 20, 2019. UFAC has 4-year terms. Cary Hulse would like to be considered for re-appointment. David Means has not advised staff of his intention.

BUDGET/FUNDING: None

STAFF RECOMMENDATION: Council takes desired action.

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Work Session

Work Session Agenda Form

Item # 5

DATE: November 4, 2019

AGENDA ITEM: Discussion Pertaining to the Memorandum of Agreement (MOA)/Amendment to the Voluntary Settlement Agreement with Warren County Pertaining to the Area known as Crooked Run West

SUMMARY: Per 2009 litigation, Council approved a Resolution on March 8, 2010 suspending collection of the Meals and Lodging Tax component of the PILOT contracts from commercial businesses in the Route 522 Corridor. Negotiations ensued between the Town and County to develop a funding agreement to offset the revenue for the Town. On August 10, 2015 a Memorandum of Agreement (MOA) was approved as a result of the negotiations with Warren County committing to annual appropriations of the meals and lodging taxes collected in the Route 522 Corridor. Crooked Run West is identified in #9 of the MOA.

On April 11, 2018 the Town and County approved an Amendment to the Voluntary Settlement Agreement regarding the Compromise for PILOT Meals and Lodging Taxes.

Attachments includes minutes of 2010, 2015 and 2018, Resolutions, MOA and Amendment.

BUDGET/FUNDING: None

STAFF RECOMMENDATION: Council takes desired action.

MEMORANDUM OF AGREEMENT
COMPROMISE FOR PILOT
MEALS & LODGING FEES

This **Memorandum of Agreement to Compromise for PILOT Meals & Lodging Fees** is hereby executed this 26th day of August, 2015 by the **Town of Front Royal, Virginia,** a Virginia municipal corporation (hereinafter "the Town") and the **County of Warren, Virginia,** a political subdivision of the Commonwealth of Virginia (hereinafter "the County") to arrive at a resolution of the ongoing issue concerning the Town's PILOT revenue from commercial businesses in the Route 522 Corridor (hereinafter "the Corridor") served by the Town's municipal utility system and to provide for continued development in the Corridor to the benefit of all residents of the Town and the County.

WITNESSETH:

RECITALS:

A. In the late 1980's and early 1990's, the Town extended municipal water and sewer utility service into the Corridor (defined herein as that area called the "Annexation Immunity Area" in that Voluntary Settlement Agreement entered into between the Town and the County, dated January 27, 1998, amended October 6, 1998, further amended August 9, 1999, and affirmed by the Circuit Court of Warren County, Virginia by Final Order Validating and Affirming Voluntary Settlement Agreement Between the Town of Front Royal and the County of Warren entered December 13, 1999 (the "Voluntary Settlement Agreement", together with that area referred to as "Crooked Run West" as set forth in Paragraph No. 10 of this Memorandum of Understanding ("MOA"), all of which will be hereinafter referred to as the "Annexation Immunity Area" or "Corridor" for purposes of this MOA), to facilitate development in the County so that the County would be able to improve the County's Public School System. Commercial and industrial development of the Corridor enabled the County to develop the tax base necessary to fund construction of new high schools and middle schools.

B. Extension of municipal utilities into the Corridor prompted concern on the part of the Town that development in the Corridor would place businesses within the Town limits at a competitive disadvantage with businesses located in the Corridor, as businesses located in the Corridor would not have to pay Town taxes.

C. The County acknowledged this concern and together with the Town jointly lobbied the General Assembly to approve special legislation in Virginia Code §15.2-2119.J and §15.2-2143, which thereby authorized the Town to provide water and sewer utility services to industrial and commercial users outside the Town's boundaries and collect such compensation therefor as may be contracted for between the Town and such users. The Town implemented utility contracts that included Payment In-Lieu of Taxes ("PILOT") fees from commercial utility customers in the Corridor, with the intent of causing all businesses both inside and outside of the Town limits paying as closely to the same amounts towards their municipal water and sewer utility payments, as well as the equivalent of the total taxes commercial utility customers would pay, as if they were located within the Town boundaries.

D. The said Voluntary Settlement Agreement documented the basic responsibilities for municipal water and sewer utility provisions in the Corridor.

E. Following the outcome of 2009 litigation between the Town and certain restaurants located in the Corridor, the Town suspended the collection of the food and beverage taxes or meals tax, transient room rentals tax or and transient occupancy or lodging taxes, also referred to as "Meals and Lodging" taxes" components, of the PILOT fees which had been included in the Town's utility contracts with businesses in the Corridor.

F. Subsequent to this suspension of collection, the Town and County have attempted to "level the playing field" between restaurants and hotels within the Town and those located in the Corridor, such that all such businesses are paying a substantially equal amount of taxes and none are realizing a competitive advantage or disadvantage based solely on which side of the Town's corporate limits they are placed.

TO THAT END, and for and in consideration of the mutual covenant contained herein, the Town and the County agree as follows:

1. For the duration of this Memorandum of Agreement (hereinafter "MOA"), the Town will not resume collection of Meals and Lodging taxes components of the PILOT fees from commercial businesses located within the "Annexation Immunity Area," as that Area is identified Paragraph A. of the Recitals above.

2. The Town will continue to maintain and establish municipal water and sewer utility contracts with commercial businesses in the said Annexation Immunity Area requiring municipal water and sewer utility services, and the Town will continue to collect PILOT fees from those customers, excluding the Meals and Lodging Tax components.

3. For all existing and future commercial municipal water and sewer utility customers operating under any Town PILOT fee Agreement in the Annexation Immunity Area the County will appropriate and provide funding to the Town through the County's General Fund Revenues for a.) the equivalent of thirty percent (30%) of the Meals Tax collected in the Corridor by the County, and b.) the equivalent of five per cent (5%) of the Lodging Tax collected in the Corridor by the County during the previous fiscal year, said appropriations to be remitted to the Town in equal, bi-annual payments to be made not later than each December 31 and June 30 annually, beginning December, 2016. The County shall provide a certified statement from its

auditor verifying the County's General Fund Revenues to include Meals and Lodging Tax revenues in the Corridor to the Town with the December payment.

4. Should the County Board of Supervisors determine that appropriations for payment prescribed in this MOA will not be incorporated into their annual appropriations in any given year, the County shall provide the Town with written notice at least one hundred-twenty (120) days in advance of the next bi-annual payment date.

5. Should the County Board of Supervisors fail to appropriate funding in compliance with the MOA in any given year, this MOA shall terminate.

6. All PILOT fee agreements with the municipal water and sewer utility customers of the Town will continue as written unless invalidated by a court of competent jurisdiction. In the event any such PILOT fee agreements as currently written are so invalidated, the Town reserves the right to amend the PILOT fee agreements so long as such PILOT fee agreements do not increase the payments required of commercial businesses beyond the payment rates charged to commercial businesses of the same category or class located within the Town limits, excluding meals and lodging taxes. The Out-of-Town utility rate, which is currently twice the In-Town rate, will continue to apply to industrial customers, unless negotiated otherwise by the Town with such customers.

7. Recognizing that future establishments of dining and lodging located in the Annexation Immunity Area should be operated as fairly and competitively as possible with similar establishments located within the Town limits, the Town and the County agree to use all due diligence in working with future businesses to consider their rezoning/conditional use permit applications, subdivision plats, site plans and utility applications as expeditiously as practical and appropriate.

8. Requests for future municipal water and sewer utility services within the Annexation Immunity Area shall continue to be considered as provided in the Voluntary Settlement Agreement and shall not require the County or the property owner/occupant to request a boundary adjustment to include the involved property/use within the boundary of the Town. Additionally, the Town will continue to be invited to provide input and due consideration of all rezoning requests in Annexation Immunity Area, as provided in the Voluntary Settlement Agreement.

9. The parcels identified as parcel numbers 12 M 2 9 (11.22ac), 12 M 2 10 (2.33ac), 12 M 2 11 (53.93 ac), 12 M 2 12 (20.00 ac), 12 M 2 13 (30.43 ac), and 12 M 2 14 (29.94 ac) shall be hereinafter referred to as "Crooked Run West (147.85ac)". The area known as Crooked Run West is planned to be developed in the future with restaurants, retail stores and financial institutions similar to those in the Crooked Run development, plus one or more hotels, with all of Crooked Run West anticipated to require an average of not more than 40,000 gallons per day of water usage and sewer discharge at full build-out. The Annexation Immunity Area as established in the Voluntary Settlement Agreement is hereby expanded and amended to include

Crooked Run West, provided that Crooked Run West is developed as herein described and its total water/sewer needs do not exceed an average of 40,000 gallons per day, unless any usage in excess of that estimate is specifically approved by the Town Council. The Town shall be entitled to execute PILOT fee Agreements with all commercial businesses in Crooked Run West and collect all PILOT fees from these customers, excluding the Meals and Lodging Tax component.

10. The County can terminate the appropriations and payment of funding described in this MOA in the event the Town Council votes and approves 1) the collection of the Meals and Lodging Tax components of the PILOT fees for commercial businesses in the Annexation Immunity Area as established by this MOA; or 2) the commencement of annexation legal filings or proceedings within the Annexation Immunity Area as established by this MOA, unless requested by the County. Annexation or Boundary Adjustment of any other area of the County or property owner initiated requests outside the Annexation Immunity Area will not give cause to terminate appropriations or payments.

11. The Town may terminate further extension of municipal water and sewer utility services to any new commercial or industrial customers in the Annexation Immunity Area if the Town determines in good faith that it does not have the utility capacity to serve such new customers without being able to serve the Town's existing municipal utility customers in accordance with the Town's contractual and legal obligations with such existing municipal utility customers.

[***Signatures begin on next following page***]

WITNESSETH the following signatures:

For the Town of Front Royal, Virginia

Timothy W. Darr, Mayor

Date: 08/24/2015

Attest:

Steven M. Burke, Town Manager

Date: 8/24/15

Approved as to Form:

Douglas W. Napier, Esq.
Town Attorney

For the County of Warren, Virginia

Richard H. Traczyk, Chairman

Date: 8/26/15

Attest:

Douglas P. Stanley, County Administrator

Date: 8/26/2015

Approved as to Form:

Blair D. Mitchell, Esq.
County Attorney

<u>EXCERPT FROM AUGUST 15, 2015 COUNCIL MEETING</u>

<u>COUNCIL APPROVAL – Memorandum of Agreement for PILOT Meals and Lodging Taxes with the County of Warren</u>

> **Summary: The Town and County have been conducting negotiations to develop a funding agreement to offset the revenue that the Town does not realize from commercial businesses in the Route 552 Corridor due to the March 8, 2010 action by Council to suspend collection of the Meals and Lodging Tax component of the PILOT Contracts. The negotiations have resulted in a proposed Memorandum of Agreement (MOA) that commits to the County annually, appropriating the equivalent of thirty percent (30%) of the Meals Tax collected in the Corridor by the County and the equivalent of five percent (5%) of the Lodging Tax collected in the Corridor by the County during the previous fiscal year, to the Town, as presented. The Town agrees, as part of the MOA, to not reinstate collection of the Meals and Lodging Tax component of the PILOT contracts for the duration of the MOA and to not approve filling for annexation of the Route 522 Corridor. The Town Attorney has identified contract language revisions that do not substantially change the basis of the agreement and that will need to be resolved with the County of Warren.**

Councilman Connolly moved, seconded by Councilman Funk that the Town Council approve a Memorandum of Agreement (MOA) with the County of Warren to establish an agreement whereby the County commits to annually appropriate the equivalent of thirty percent (30%) of the Meals Tax and the equivalent of five percent (5%) of the Lodging Tax collected in the Corridor by the County during the previous fiscal year to the Town, as presented. He further move that Council authorize the Mayor, Town Manager, and Town Attorney to execute a Memorandum of Agreement (MOA) with the County of Warren to include any non-substantive changes as identified by the Town Attorney.

Councilman Hrbek moved seconded by Councilman Egger that Council postpone, until a public hearing could be held on the matter.

Councilman Egger stated that as Councilman Hrbek pointed out, the MOA was in direct violation of the Town's water Code. She noted that if Council was choosing to violate a section of the Town's Code that required a public hearing, then the Council should hold a public hearing to do so.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call, On Motion to Postpone; MOTION FAILED)

Councilman Egger explained her sincere concerns about this offer. She noted that the largest concern as the inclusion of Crooked Run II, as currently the Town does not have to provide water to Crooked Run II under the Corridor Agreement, though if the Town approves this, as presented tonight, then the Town would extend water into Crooked Run II. Councilman Egger noted that once Crooked Run II is developed with water, hotels, and other businesses, then the Town has no recourse.

Councilman Egger explained her reasoning by reading from past minutes, noting that the Town was going to make the exact same mistake that was made in January 1998. She stressed that if water is already provided to the area then the customer is to be provided water. She noted her serious concern, explaining that the Town already shot themselves in one foot, and if this is approved, then now the Town is in essence shooting the other foot. She stated that Mr. Carter was with Mr. Athey pushing the matter through, and Mr. Athey was the Mayor at the time, and then Mr. Athey goes on to represent the shopping center that this benefits. She noted that the conditional use permit has expired as well and Warren County is not looking out for what was best for the Town taxpayer. She suggested the Town Council remember who they were working; the Town citizens, and the small and large businesses of the Town of Front Royal.

Councilman Egger noted that this is not a give and take relationship, and she added that the Town citizens were also citizens of the County as well and the Corridor Agreement is now lopsided and voting for this MOA makes it even more lopsided. She reiterated that once the water is extended to the area it would be connected to Crooked Run II. Ms. Egger suggested taking Crooked Run II out of the equation, or at the very least, wait before finalizing this vote.

Councilman Connolly noted that the agreement before Council had been discussed repeatedly and discussed in the last closed session in detail. He added that either party can walk away from the agreement, as it is not a contract. He stated that he does not see that the Town is not protected as the Town can walk away from the agreement at any time.

Councilman Hrbek stated that practically and politically there would never be a Town Council that would ever walk away from $250,000 or more in revenue for a 50/50% shot at annexation. He noted that it was a "pretty picture" and typical of what government does. Mr. Hrbek stated that it was standard of what occurs, government *could* walk away, though there is no way that they can walk away practically.

Councilman Hrbek moved, seconded by Councilman Egger, to remove Item #10 – Crooked Run II from the MOA.

Councilman Egger stated that once water is extended and once Crooke Run II is developed, the County can vote to not pay the Town meals and lodging tax. She questioned what the Town would do what the Town would then do if the County chose to stop paying those monies.

Councilman Funk stated that then the Town could impose double water and sewer fees or re-impose the meals taxes that Council voted down this evening. He added that should the County choose to stop paying the funds to the Town of Front Royal it would certainly bolster an annexation if it came to that point. Councilman Funk added that this agreement was beneficial to the Town of Front Royal and the Town had recourse in the event the County stops their end of the agreement. He reiterated that double water and sewer would definitely be a viable option if the PILOT fees were not coming into the Town.

Councilman Hrbek stated that having Crooked Run II included is in direct violation of the Code. He stated that the agreement grants water that the County and property owner must approach the Town with a boundary request and this was a direct, blatant violation of the Town Code.

Councilman Egger noted that the County can simply stop paying their meals and lodging portion and stressed her desire to remove Crooked Run II from this agreement to protect the Town citizens.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call, on Motion to Remove Crooked Run II; MOTION FAILED)

Councilman Egger moved, seconded by Councilman Hrbek to postpone the vote on this agreement until the full information from Attorney Carter Glass is received.

Councilman Tewalt noted that he would support the matter as all the information has not been received in full. He added that he did not wish to jump into a matter without full review. He stated that he would like it back on the agenda within 30 days.

Vote: Yes –Egger, Hrbek and Tewalt
No – Connolly, Funk and Tharpe
Abstain – N/A
Absent – N/A

Mayor Darr noted that it had been discussed a great deal. He stated that he would vote against the motion to postpone and should the information from Mr. Glass change anything, then the Town Council could choose to cancel the MOA at that time.

No – Mayor Darr
(By Roll Call, on Motion to Await Glass Information; MOTION FAILED)

Councilman Hrbek moved, seconded by Councilman Egger, to add a new Item #13 to the end of the agreement stating that Warren County would pay the Town of Front Royal half of all new revenue from the meals and lodging taxes.

Councilman Funk asked about text on paragraph #3 of the agreement, where it states "the equivalent of thirty percent of the meals tax collected in the Corridor by the County and the equivalent of five percent of the lodging tax collected in the Corridor by the County during the previous fiscal year to be remitted to the Town;" he asked if the County were able to increase its meals tax, would it not still be 30% of the additional revenue. Mr. Napier noted that it seemed it would be correct, though he would like to see the actual language.

Councilman Hrbek noted that his intention pertained to the lodging tax, as he was unsure if they could raise their meals tax. He stated that he believed they are at the limit for meals at this time perhaps.

Councilman Connolly asked if the County would need to go to a referendum on the matter. Mr. Napier noted that he would need to research that.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; On Motion re: Meals/Lodging 50% Increase, MOTION FAILED)

Councilman Egger stressed that Council was making a huge mistake. She stated that she was not against growth and not against Chik-Fil-A. She noted that she did not want to see Spelunkers go out of business. Ms. Egger noted that Council was there to protect Front Royal, the people of Front Royal, and the businesses of Front Royal. She stated that she would like a different deal for Crooked Run II and she did not want the Town vulnerable or to see the Town in jeopardy.

Councilman Hrbek moved, seconded by Councilman Egger, that all monies received under this MOA would be used to fund economic development within the Town of Front Royal, including, but not limited to an economic development position.

Councilman Hrbek stated that if the Town was going to help build the competition to our own in-town businesses, then the Town should use that revenue to start building our own economic development and redevelopment within our own Town borders.

Councilman Tewalt noted that he would not support the full amount of the money being used this way, though perhaps Council should have this discussion at a worksession in detail. Councilman Funk stated that he agreed with Mr. Hrbek in principle, but the discussion should not take place this evening, but rather should be at a worksession.

Councilman Egger noted that it was important to go towards economic development. Councilman Tewalt stated that it was over a year before monies would be received and he was not willing to make such a vote this evening.

Councilman Hrbek stated that the discussion should be debated publicly at a regular meeting.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; On Motion re: Use of Funds for Eco. Development, MOTION FAILED)

Councilman Connolly noted that he was told many times that the Town and County should work together and work out differences during his campaign. He stated that this MOA was an excellent way for the Town to realize a portion of the revenue that has been denied us since the court ruling, and set a framework for the future.

Councilman Egger stated this is a façade of working together with the County and the Town has been giving repeatedly and the Town is going to be disappointed greatly regarding this issue.

Councilman Funk noted that the Town could take the option, take a friendly boundary option (though the County will not do such a measure), or even annexation. Mr. Funk stated that the Town could end up with higher taxes, or even shut down the Corridor. He noted that the Town is making money off

PILOT fees, is it the amount of money we thought we would make – no, though it is enough to assist the Town in great ways. Councilman Funk stated that there were many great things going on through the Town with new restaurants and fewer vacant buildings and there were other areas that needed improvement.

Councilman Egger stated that the County may say no to a friendly boundary adjustment, but why. She suggested that the Town should have them answer, rather than make decisions without having the full answers. She noted that the Town should do nothing else to create dense commercial areas outside of the Town. Ms. Egger added that no one can pretend that Wal-Mart did not shut K-Mart down.

Vote: Yes – Connolly, Funk, Hrbek, Tewalt and Tharpe
No – Egger
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; On MOA, MOTION CARRIED)

AMENDMENT TO VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE COUNTY OF WARREN, VIRGINIA, AND THE TOWN OF FRONT ROYAL, VIRGINIA, REGARDING THE COMPROMISE FOR PILOT MEALS AND LODGING TAXES

This Amendment to the Voluntary Settlement Agreement (hereinafter the "Amendment"), entered into this 11th day of April, 2018 pursuant to the authority granted by Sections 15.2-1300 and 15.2-3400 of the Code of Virginia, 1950, as amended, by and between the **County of Warren, Virginia**, a political subdivision of the Commonwealth of Virginia, by and through its Board of Supervisors (hereinafter the "County") and the **Town of Front Royal, Virginia**, a Virginia municipal corporation, by and through its Town Council (hereinafter the "Town").

WITNESSETH:

RECITALS:

A. By Final Order Validating and Affirming the Voluntary Settlement Agreement between the Town of Front Royal and the County of Warren, entered by a Special Court sitting in the Circuit Court of the County of Warren, Virginia, on December 13, 1999; the said Special Court affirmed and validated a Voluntary Settlement Agreement executed by the Town and the County as of January 27, 1998, amended on October 6, 1998, and further amended on August 9, 1999 (hereinafter the "Voluntary Settlement Agreement").

B. The County and Town entered into the Voluntary Settlement Agreement to facilitate development in the County so that the County could generate revenue to improve the County's Public School System. Commercial and industrial development of the North US Route 340/522 Corridor (defined as the "Corridor" in the Voluntary Settlement Agreement) (hereinafter the "Corridor") enabled the County to develop the tax base necessary to fund construction of new public high schools and middle schools.

C. Extension of municipal utilities into the Corridor prompted concern on the part of the Town that development in the Corridor would place businesses within the Town limits at a competitive disadvantage with businesses located in the Corridor, as businesses located in the Corridor would not have to pay Town taxes.

D. The County acknowledged this concern and together with the Town jointly lobbied the General Assembly to approve special legislation in Virginia Code §15.2-2119.J and §15.2-2143, which thereby authorized the Town to provide public water and sewer utility services to industrial and commercial users outside the Town's boundaries and collect such compensation therefor as may be contracted for between the Town and such users. The Town implemented public utility contracts that included Payment In-Lieu of Taxes ("PILOT") fees from commercial public utility customers in the Corridor, with the intent of causing all businesses both inside and outside of the Town limits paying as closely to the same amounts towards their municipal water and sewer utility payments, as well as the equivalent of the total taxes commercial public utility customers would pay, as if they were located within the Town boundaries.

E. The Voluntary Settlement Agreement documented the basic responsibilities for municipal water and sewer utility provisions in the Corridor.

F. Following the outcome of 2009 litigation between the Town and certain restaurants located in the Corridor, the Town suspended the collection of the food and beverage taxes or meals tax, transient room rentals tax and transient occupancy or lodging taxes, also referred to as "Meals and Lodging" taxes" components, of the PILOT fees which had been included in the Town's public utility contracts with businesses in the Corridor.

G. Subsequent to this suspension of collection, the Town and County have attempted to "level the playing field" between restaurants and hotels within the Town and those located in the Corridor, such that all such businesses are paying a substantially equal amount of taxes and no businesses are realizing a competitive advantage or disadvantage based solely on which side of the Town's corporate limits they are placed.

H. In addition, the Town and County both desire to expand the Corridor area to include property located on the west side of Crooked Run, which includes tax map parcel numbers 12 M 2 9 (11.22ac), 12 M 2 10 (2.33ac), 12 M 2 11 (53.93 ac), 12 M 2 12 (20.00 ac), 12 M 2 13 (30.43 ac), and 12 M 2 14 (29.94 ac), in total containing 147.85 acres (hereinafter referred to as "Crooked Run West").

I. The County and the Town have recognized that amending the Voluntary Settlement Agreement as set forth herein will be beneficial to the orderly growth and continued viability of both localities.

J. Virginia Code Section 15.2-3400 allows localities to voluntarily enter into agreements with other localities to settle and resolve matters beneficial to the orderly growth and continued viability of such localities.

K. The parties hereto have been advised by officials of the Commission on Local Government and the Office of the Attorney General that the Court Orders contained in the said Voluntary Settlement Agreement provide for an Amendment to the Voluntary Settlement Agreement without the necessity of the Amendment being additionally submitted to the Commission on Local Government and then being further ratified by a Special Court appointed by the Supreme Court of Virginia.

NOW, THEREFORE WITNESSETH, that for and in consideration of the premises, and the mutual benefits flowing to all residents of the County, whether living within or without the Town's corporates limits, the parties hereto agree as follows:

1. The parties agree to amend the Voluntary Settlement Agreement as provided for herein, and to accomplish all steps reasonable and necessary to have the proper approvals to effectuate this Amendment.

2. The Corridor area, as defined in the Voluntary Settlement Agreement, is expanded to include Crooked Run West which contains tax map parcel numbers 12 M 2 9 (11.22ac), 12 M 2 10 (2.33ac), 12 M 2 11 (53.93 ac), 12 M 2 12 (20.00 ac), 12 M 2 13 (30.43 ac), and 12 M 2 14 (29.94 ac), in total containing 147.85 acres (the map of the Corridor and Crooked Run West is attached hereto as Exhibit A). The area known as Crooked Run West is planned to be developed in the future with restaurants, retail stores and financial institutions similar to those in the Corridor, plus one or more hotels, with all of Crooked Run West anticipated to require an average of not more than 40,000 gallons per day of water usage and sewer discharge at full build-out. The Corridor, as established in the Voluntary Settlement Agreement, is hereby expanded and amended to include Crooked Run West, provided that Crooked Run West is developed as herein described and its total public utility water/sewer needs do not exceed an average of 40,000 gallons per day, unless any usage in excess of that estimate is specifically approved by the Town Council.

3. For the duration of the Amendment, the Town will not resume collection of Meals and Lodging taxes components of the PILOT fees from commercial businesses located within the Corridor or Crooked Run West.

4. The Town will continue to maintain and establish municipal water and sewer utility contracts with commercial businesses in the Corridor and Crooked Run West requiring municipal water and sewer utility services, including in-town rates for tap (connection) fees, and the Town will continue to collect PILOT fees from those customers, excluding the Meals and Lodging Tax components.

5. For all existing and future commercial municipal water and sewer utility customers operating under any Town PILOT fee agreement in the Corridor and Crooked Run West, the County will appropriate and provide funding to the Town through the County's General Fund Revenues for a) the equivalent of thirty percent (30%) of the Meals Tax collected in the Corridor and Crooked Run West by the County, and b) the equivalent of five percent (5%) of the two percent (2%) Lodging Tax collected in the Corridor and Crooked Run West by the County during the previous fiscal year, said appropriations to be remitted to the Town in equal, bi-annual payments to be made not later than each December 31 and June 30 annually, beginning December, 2016. The County shall provide a certified statement from its auditor verifying the County's General Fund Revenues to include Meals and Lodging Tax revenues in both the Corridor and Crooked Run West to the Town with the December payment. The funding by the County to the Town shall not include a portion of the three percent (3%) lodging tax that must be designated and spent solely for tourism and travel in accordance with § 58.1-3819 of the Code of Virginia (1950), as amended.

6. Should the County Board of Supervisors determine that appropriations for payment prescribed in this Amendment will not be incorporated into its annual appropriations in any given year, the County shall provide the Town with written notice at least one hundred-twenty (120) days in advance of the next bi-annual payment date.

7. Should the County Board of Supervisors fail to appropriate funding in compliance with this Amendment in any given year, this Amendment shall terminate.

8. All PILOT fee agreements with the municipal water and sewer utility customers of the Town will continue as written unless invalidated by a court of competent jurisdiction. In the event any such PILOT fee agreements as currently written are so invalidated, the Town reserves the right to amend the PILOT fee agreements so long as such PILOT fee agreements do not increase the payments required of commercial businesses beyond the payment rates charged to commercial businesses of the same category or class located within the Town limits, excluding meals and lodging taxes. The Out-of-Town utility rate, which is currently twice the In-Town rate, will continue to apply to industrial customers, unless negotiated otherwise by the Town with such customers.

9. Recognizing that future establishments of dining and lodging located in the Corridor and Crooked Run West should be operated as fairly and competitively as possible with similar establishments located within the Town limits, the Town and the County agree to use all due diligence in working with future businesses to consider their rezoning/conditional use permit applications, subdivision plats, site plans and utility applications as expeditiously as practical and appropriate.

10. Requests for future municipal water and sewer utility services within the Corridor and Crooked Run West shall continue to be considered as provided in the Voluntary Settlement Agreement and shall not require the County or the property owner/occupant to request a boundary adjustment to include the involved property/use within the boundary of the Town. Additionally, the Town will continue to be invited to provide input and due consideration of all rezoning requests in the Corridor and Crooked Run West.

11. The County can terminate the appropriations and payment of funding described in this Amendment in the event the Town Council votes and approves the collection of the Meals and Lodging Tax components of the PILOT fees for commercial businesses in the Corridor or Crooked Run West as established by this Amendment.

12. The Town will not initiate an annexation action in the Annexation Immunity Area, as defined in the Voluntary Settlement Agreement and shown on the attached Exhibit B, for twenty-five (25) years from the date of execution of this Amendment (hereinafter the "Annexation Immunity Area"). The County can terminate the appropriations and payment of funding described in this Amendment in the event the Town commences annexation legal filings or proceedings within the Annexation Immunity Area within such time period above, unless requested by the County. Annexation or Boundary Adjustment of any other area of the County or property owner initiated requests outside the Annexation Immunity Area will not give cause to terminate appropriations of payments.

13. The Town may terminate further extension of municipal water and sewer utility services to any new commercial or industrial customers in the Corridor or Crooked Run West if the Town determines in good faith that it does not have the utility capacity to serve such new customers without being able to serve the Town's existing municipal utility customers in accordance with the Town's contractual and legal obligations with such existing municipal utility customers.

14. The parties agree to present the Amendment to the Commission on Local Government, if required, as a proposed settlement pursuant Virginia Code Section 15.2-3400.

15. The parties agree that should a recommendation of the Commission on Local Government not be needed on the Amendment, then the Town Council and Board of Supervisors

will pass respective Town and County resolutions to adopt either this Amendment or a modified amendment to the Voluntary Settlement Agreement acceptable to all parties.

16. This Amendment may be amended by mutual written agreement of both the County of Warren and Town of Front Royal.

Witness the following signatures on the dates indicated.

COUNTY OF WARREN, VIRGINIA

By: ______________________________
Tony F. Carter, Chairman,
Warren County Board of Supervisors

Attest:

____
Douglas P. Stanley,
Clerk to the Board of Supervisors

Approved as to form:

____
Dan N. Whitten,
County Attorney

TOWN OF FRONT ROYAL, VIRGINIA

By: _______________________

Hollis L. Tharpe, Mayor

Attest:

____

Jennifer E. Berry,
Clerk to Town Council

Approved as to form:

____

Douglas W. Napier
Town Attorney

TOWN COUNCIL OF THE TOWN OF FRONT ROYAL, VIRGINIA

***A RESOLUTION TO APPROVE THE 2018 AMENDMENT TO THE 1998-1999 VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE TOWN OF FRONT ROYAL AND THE COUNTY* REGARDING THE COMPROMISE FOR PILOT MEALS AND LODGING TAXES**

WHEREAS, following the statutory procedures set forth in Title 15.2, of the Code of Virginia, regarding Voluntary Settlement Agreements, the Town of Front Royal, Virginia, a municipal corporation, (the "Town Council" or the "Town", as the case may be) and the County of Warren, Virginia, a political subdivision, (the "Board of Supervisors", or the "County", as the case may be) both of the Commonwealth of Virginia, first entered into in 1998, and amended and finalized in 1999, entered into a Voluntary Settlement Agreement (the "Voluntary Settlement Agreement"). The purpose of the Voluntary Settlement Agreement was to facilitate development in the County so that the County could generate revenue to improve the County's Public School System. Commercial and industrial development of the North US Route 340/522 Corridor (defined as the "Corridor" in the Voluntary Settlement Agreement) (hereinafter the "Corridor") enabled the County to develop the tax base necessary to fund construction of new public high schools and middle schools.

WHEREAS, in order to alleviate concern on the part of the Front Royal Town Council that development in the Corridor would place businesses within the Town limits at a competitive disadvantage with businesses located in the Corridor, as businesses located in the Corridor would not have to pay Town taxes, the Town and Board of Supervisors of Warren County, Virginia jointly obtained approval of the General

Assembly to amend the Code of Virginia to allow the Town to provide public water and sewer utility services to industrial and commercial users outside the Town's boundaries and collect such compensation therefor as may be contracted for between the Town and such users. The Town thereupon implemented public utility contracts that included Payment In-Lieu of Taxes ("PILOT") fees from commercial public utility customers in the Corridor, with the intent of causing all businesses both inside and outside of the Town limits paying as closely to the same amounts towards their municipal water and sewer utility payments, as well as the equivalent of the total taxes commercial public utility customers would pay, as if they were located within the Town boundaries. The Voluntary Settlement Agreement documented the basic responsibilities for municipal water and sewer utility provisions in the Corridor.

WHEREAS, experience has demonstrated to the Town Council and County that businesses, which must otherwise collect the food and beverage taxes or meals tax, transient room rentals tax and transient occupancy or lodging taxes, also referred to as "Meals and Lodging" taxes" components, of the PILOT fees which had been included in the Town's public utility contracts with businesses in the Corridor, are more efficiently recruited into the Corridor, and thus generate more revenue for the Town and County, if the Meals and Lodging taxes components of the PILOT fees are not included in the Town's PILOT agreements. Therefore, the Town and County, in 2015, entered into a revenue-sharing agreement, whereby the County began to share a portion of its meals and lodging taxes that it collects, with the Town, which said revenue-sharing agreement was memorialized in a Memorandum of Agreement ("MOA") between the Town and County. Additionally, the Town and County have both experienced that businesses appreciate the political stability that accompanies the lack of fear of the Corridor being subjected to the possibility of being annexed into the Town's corporate limits. Further, the Town and County both desire the additional financial benefits accruing from certain additional commercial property being added to the Corridor, so long as the Town has the public utility capacity to supply the additional commercial property with municipal public utility services.

WHEREAS, Town Council, and the Board of Supervisors find that this Amendment to the Voluntary Settlement Agreement is beneficial to the orderly growth and continued viability of both the Town of Front Royal and the County of Warren.

WHEREAS, the Town and County have been advised by officials of the Commission on Local Government and the Office of the Attorney General that the 1998 Court Order contained in the said Voluntary Settlement Agreement provide for Amendments to the Voluntary Settlement Agreement, including this 2018 Amendment to the Voluntary Settlement Agreement, are not required to be submitted to the Commission on Local Government and also not then being further ratified by a Special Court appointed by the Supreme Court of Virginia.

NOW, THEREFORE, BE IT HEREBY RESOLVED AND ENACTED by the Town Council of the Town of Front Royal, Virginia, that the said 2018 Amended Voluntary Settlement is approved, ratified, affirmed, and attached hereto, made a part hereof, and incorporated by reference herein for all purposes.

[VOTES AND APPROVALS ON THIS RESOLUTION ON PAGE FOLLOWING.]

This Resolution shall be effective immediately upon enactment of approval of the same 2018 Amendment to the Voluntary Settlement Agreement by the Warren County, Virginia, Board of Supervisors.

****

This Resolution was approved at the Regular Meeting of the Town of Front Royal, Virginia, Town Council conducted on 4-9-, 2018, upon the following recorded vote:

APPROVED:

Hollis L. Tharpe

Hollis L. Tharpe, Mayor

Town Council Members:

John P. Connolly	yes	Gary Gillispie	yes
Jacob Meza	yes	William A. Sealock	yes
Christopher Morrison	yes	Eugene R. Tewalt	yes

Attest:

Jennifer E. Berry

Jennifer E. Berry, CMC, Clerk of Council

Approved as to form and legality:

Douglas W. Napier

Douglas W. Napier, Town Attorney

Date: 4 / 9 / 18

<u>EXCERPT FROM APRIL 9, 2018 COUNCIL MEETING</u>

<u>COUNCIL APPROVAL – Resolution to Approve 2018 Amendment to the 1998-1999 Voluntary Settlement Agreement</u>

Summary: Council is requested to approve a Resolution approving the 2018 Amendment to the 1998-1999 Voluntary Settlement Agreement (VSA) between the Town of Front Royal and the County of Warren regarding the compromise for PILOT Meals and Lodging Taxes to approve Resolution for amendment as revised on April 3, 2018 by the County.

Vice Mayor Tewalt moved, seconded by Councilman Connolly that Council approve a Resolution approving the 2018 Amendment to the 1998-1999 Voluntary Settlement Agreement between the Town of Front Royal and the County of Warren Regarding the compromise for PILOT Meals and Lodging Taxes as revised and approved by the County of Warren Board of Supervisors on April 3, 2018.

Councilman Meza asked for clarification. Mayor Tharpe and Mr. Napier explained that Warren County now has a 5% lodging tax and 3% of the 5% must be for tourism matters. Mr. Napier stated that recently the County and Town joined in part of the Joint Tourism Board in order to allocate funds for jointly identified tourism issues. Councilman Meza asked for information on the advantage of placing the matter out 25 years rather than 15 years or permanent. Councilman Connolly stated that the VSA was permanent, though the moratorium is on annexation and is what is limited on years. He added that previously annexation has been discussed in detail and the arguments were lengthy.

Councilman Sealock stated that repeatedly it has been stated that this agreement continues to protect the Town and he would support it as presented.

Vote: Yes – Connolly, Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tharpe did not vote as there was no tie to require his vote)
(By Roll Call)

R-5-10

RESOLUTION REGARDING CONTRACTS FOR RESTAURANT UTILITY CUSTOMERS AND MOTEL/HOTEL UTILITY CUSTOMERS IN THE ROUTE 522 SERVICE AREA

WHEREAS, pursuant to the 1998 Annexation Settlement Agreement with Warren County, the Town has heretofore developed and executed Contracts for water and sewer service to commercial customers in the Route 522 Service Area; and,

WHEREAS, said Contracts call for the payment of utility charges that include a sum representing a payment in lieu of taxes (PILOT); and

WHEREAS, the PILOT component of the utility charges includes, in certain contracts, a sum equal to Meals Taxes and Lodging Taxes that such commercial customers "would pay to the Town" if they were located within the boundaries of Front Royal; and,

WHEREAS, the Honorable Dennis Hupp, Judge of the Circuit Court of Warren County, Virginia, has ruled in a law suit styled *Applebee's Restaurants, etc., et als v. Town of Front Royal,* that three restaurants in the Route 522 Service Area are not, by virtue of the language in their Contracts, legally obligated to pay the Town the Meals Tax component of PILOT, because such Tax is paid by the customers of such restaurants rather than the restaurants themselves, under the current provisions of the Front Royal Code; and

WHEREAS, Lodging Taxes are similarly paid by customers of hotels and motels rather than the motels and hotels themselves, under the current provisions of the Front Royal Code.

NOW, THEREFORE, BE IT, HEREBY, RESOLVED by the Town Council of the Town of Front Royal, Virginia:

(1) that the Director of Finance is, hereby, directed to eliminate, from all Town water and sewer rate schedules and fees, the Meals Tax component of PILOT fees for all food establishment businesses in the Route 522 Service Area, as well as the Lodging Tax component for any hotel/motel in the same said area;

(2) that the Director of Finance is, hereby, directed to eliminate, as of the March 2010 billing, the Meals Tax component of PILOT fees from the monthly bills for all food establishment businesses in the Route 522 Service Area, as well as the Lodging Tax component from any hotel/motel in the same said area;

(3) that, notwithstanding the foregoing, all remaining portions of the PILOT charges described in said Contracts shall be billed and enforced as to said businesses and as to all other businesses within the Route 522 Service area without exception;

(4) that individual food establishment businesses in the same service area who earlier filed protests with the said Director of Finance, as provided by their Contracts, shall be relieved of any liability for the Meals Tax component of such PILOT charges, as of

the date of such filing and thereafter, but that under no circumstances shall the said Director authorize or permit any refunds of any description to such businesses, for the reasons set forth in the aforesaid decision of the said Circuit Court of Warren County, unless directed in that Court's Order of February 2, 2010; and

(5) that the Town Council hereby reserves the right to adopt new rate schedules and fees, as expressly permitted in such Contracts, that reinstitute all or any portion of the Meals Tax and Lodging Tax components of such PILOT charges, applicable to such businesses in the Route 522 Service Area, in the event such Town taxes hereafter are imposed on, and paid by, food establishments and motels/hotels, rather than the customers of such businesses, or in the event the Town obtains appropriate contractual authority from Warren County to include such PILOT charges in the rates applicable to such businesses in the Route 522 Service Area.

****

THIS RESOLUTION was approved at the Regular Meeting of the Town of Front Royal, Virginia, Town Council conducted on March 8, 2010, upon the following recorded vote:

Thomas E. Conkey	Yes/No	Chris W. Holloway	Yes/No
Bret W. Hrbek	Yes/No	Carson C. Lauder	Yes/No
Thomas H. Sayre	Yes/No	N. Shae Parker	Yes/No

APPROVED:

Eugene Tewalt, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

Approved as to form and legality:

Thomas R. Robinett, Town Attorney

Date: 3 / 12 / 10

EXCERPT FROM MARCH 8, 2010 COUNCIL MEETING MINUTES

COUNCIL APPROVAL – Resolution Regarding Contracts for Restaurant & Motel/Hotel Utility Customers in the Route 522 Service Area

Vice Mayor Hrbek moved that Council approve a resolution regarding contracts for restaurant and motel/hotel utility customers in the Route 522 Service Area, that directs the Finance Director to specific instructions as presented.

Councilman Sayre moved to table the approval of the resolution.

Vote: Yes – Sayre

No – Conkey, Holloway, Hrbek, Lauder and Parker

Abstain – N/A

Absent – N/A

(Mayor Tewalt did not vote as there was no tie to require his vote)

(On Motion to Table, MOTION FAILED)

Vote: Yes – Conkey, Holloway, Hrbek, Lauder and Parker

No – N/A

Abstain – Sayre

Absent – N/A

(Mayor Tewalt did not vote as there was no tie to require his vote)

(On Motion to Approve the Resolution, MOTION CARRIED)

6

FRONT ROYAL
1788
VIRGINIA

Work Session Agenda Form

DATE: November 4, 2019

Item # 6

Work Session

AGENDA ITEM: Discussion Pertaining to the Town's Water Policy

SUMMARY: The Town's Water Policy was added to the Town Code on June 25, 2012. On December 10, 2012 it was amended to include the Crooked Run West Area.

Attached is the Water Policy, 2012 minutes and approved ordinances

BUDGET/FUNDING: None

STAFF RECOMMENDATION: Council takes desired action.

Town Code Chapter 134 (C)

C. EXTENSION POLICY BEYOND TOWN LIMITS: To better serve the social and economic needs and the common good of Front Royal and Warren County, the Town Council of Front Royal has formulated these policies and procedures for the extension of water and sewer service to Warren County.

The Town has evaluated our resources and anticipated growth within the Town to determine the anticipated excess volume available for extension into Warren County for residential, commercial, or industrial use. This volume will be determined annually based upon conditions within the Town and County. Excess volume shall be defined as the current and projected volume required by the Town subtracted from the current permitted plant capacities.

1. The contact person for the Town is the Town Manager. Any request for water and/or sewer services must be made in writing to the Town accompanied by a joint request from the property owner and the County for the property to be boundary adjusted into the Town's corporate limits or justification to simply provide utility extension. Such request must be made prior to a rezoning or any other action by the County.

2. The Town Council will decide on a case-by-case basis whether to provide water and sewer to the proposed property(ies) as well as whether a boundary adjustment is appropriate.

3. Following a boundary adjustment, the Town will consider the appropriate zoning classification of the property to be boundary adjusted and will complete a rezoning of the property to the classification deemed appropriate through the standard zoning process. Boundary adjusted property(ies) shall be considered as part of the water volume allocated by the Town to the County.

4. In any case of rezoning by the Town, the Town Council will consider proffers deemed necessary to mitigate the impact of the development on County services, as well as what proffers are necessary for the Town. These decisions shall be made before the Town's rezoning of the property(ies) is completed.

5. The Town may elect to provide water and/or sewer services without a boundary adjustment where the Town Council determines it would not be feasible or appropriate to provide other Town services to the property.

6. Extension of utility service shall require development, submittal, and review of site development plans demonstrating the proposed utility locations, proposed usage, appropriate modeling demonstrating no impact to existing users, and construction standard complying with Town standards.

7. Design and construction standards for all utility extensions shall comply with the current standards and specifications adopted by the Town.

8. The Town presently has no intention of extending water and sewer lines into the

unincorporated portion of the County at the Town's expense.

9. The Town presently has no desire to sell water for resale through a master meter to third parties.

10. Given the Town's Inflow and Infiltration (I&I) issues associated with the sanitary sewer system, the Town has no desire to accept outside water sources into the Town's sewer system. Future considerations to outside water sources will be evaluated as the I&I issues are addressed.

11. This Policy can be reviewed and updated by Town Council as necessary, but at a minimum annually.

AN ORDINANCE TO AMEND SECTION 134-1 OF THE FRONT ROYAL TOWN CODE PERTAINING TO WATER AND SEWER CONNECTIONS

WHERES, the Water and Sewer Policy was approved by Council on September 25, 2006; and,

WHEREAS, Council discussed the said Policy at the Council Retreat held on January 28, 2012; and,

NOW, THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia that 134-1 of the Front Royal Town Code is hereby amended as follows:

134-1 ~~CONNECTION REQUIRED~~ CONNECTIONS

A. **Connection Requirements**

Every house used for human habitation and every place of business or manufacture where one (1) or more persons are employed shall be connected to the Town water system and to the Town sewer system when they are accessible, unless such house or place of business or manufacture is served by an adequate sewer system approved by the State Health Department. All methods of disposing of human excreta in these places of habitation, business or manufacture other than by a properly connected water closet are hereby declared to be unlawful.

When they become accessible, connection to the sewer and water mains shall be made within one (1) year after notification to the property owners by the Town Manager. Any person violating the provisions of this sections shall be punished as provided in Chapter 1, Article II, Penalties, of this Code, and each week's failure to comply herewith shall constitute a separate offense.

B. **Sewer Connection Requirement**

All premises which are connected to and using the Town sewer system shall be required to be connected to and use the Town water system if the Town water systems available to serve the premises.

C. Extension Policy Beyond Town Limits

To better serve the social and economic needs and the common good of Front Royal and Warren County, the Town Council of Front Royal has formulated these policies and procedures for the extension of water and sewer service to Warren County.

The Town has evaluated our resources and anticipated growth within the Town to determine the anticipated excess volume available for extension into Warren County for residential, commercial, or industrial use. This volume will be determined annually based upon conditions within the Town and County. Excess volume shall be defined as the current and projected volume required by the Town subtracted from the current permitted plant capacities.

1. **The contact person for the Town is the Town Manager. Any request for water and/or sewer services must be made in writing to the Town accompanied by a joint request from the property owner and the County for the property to be boundary adjusted into the Town's corporate limits or justification to simply provide utility extension. Such request must be**

made prior to a rezoning or any other action by the County.

2. The Town Council will decide on a case-by-case basis whether to provide water and sewer to the proposed property(ies) as well as whether a boundary adjustment is appropriate.

3. Following a boundary adjustment, the Town will consider the appropriate zoning classification of the property to be boundary adjusted and will complete a rezoning of the property to the classification deemed appropriate through the standard zoning process. Boundary adjusted property(ies) shall be considered as part of the water volume allocated by the Town to the County.

4. In any case of rezoning by the Town, the Town Council will consider proffers deemed necessary to mitigate the impact of the development on County services, as well as what proffers are necessary for the Town. These decisions shall be made before the Town's rezoning of the property(ies) is completed.

5. The Town may elect to provide water and/or sewer services without a boundary adjustment where the Town Council determines it would not be feasible or appropriate to provide other Town services to the property.

6. Extension of utility service shall require development, submittal, and review of site development plans demonstrating the proposed utility locations, proposed usage, appropriate modeling demonstrating no impact to existing users, and construction standard complying with Town standards.

7. Design and construction standards for all utility extensions shall comply with the current standards and specifications adopted by the Town.

8. The Town presently has no intention of extending water and sewer lines into the unincorporated portion of the County at the Town's expense.

9. The Town presently has no desire to sell water for resale through a master meter to third parties.

10. Given the Town's Inflow and Infiltration (I&I) issues associated with the sanitary sewer system, the Town has no desire to accept outside water sources into the Town's sewer system. Future considerations to outside water sources will be evaluated as the I&I issues are addressed.

11. This Policy can be reviewed and updated by Town Council as necessary, but at a minimum annually.

D. Extension Moratorium Areas

Recognizing demonstrated service issues in providing utility service to certain areas within Warren County, a moratorium of utility connections and extensions to all undeveloped properties or lots not served by Town utilities as of the date of adoption of this Code Section is established that shall require sufficient studies and modeling prior to the Town's consideration of additional connections or extensions with the exception of:

1. **Property zoned commercial or industrial that is currently located within the Rt. 522 Corridor located to the east of Rt. 522, south of Fairground Road, west of the Norfolk and Southern Railroad and north of Country Club Road;**
2. **Blue Ridge Shadows Subdivision;**
3. **McKay Property jointly owned by the Town and County;**
4. **Henselstone Subdivision**
5. **Guard Hill Road (within existing water service area)**
6. **Harmony Hollow Road**

This ordinance shall become effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted 6-25- 2012, upon the following recorded vote:

Thomas E. Conkey	Yes/No	Chris W. Holloway	Yes/No
Hollis L. Tharpe	Yes/No	Carson C. Lauder, Jr.	Yes/No
Thomas H. Sayre	Yes/No	N. Shae Parker	Yes/No

A public hearing on the above was held on 6-11- ,2012 having been advertised in the Northern Virginia Daily on 5-24 ,2012 and 6-2 ,2012. The Ordinance was enacted at the Regular Meeting of the Town Council held 6-25- 2012.

Approved as to form and legality:

Douglas W. Napier, Town Attorney
Date: 07/06/2012

134- W&S
Moratorium Area

AN ORDINANCE TO AMEND SECTION 134-1 OF THE FRONT ROYAL TOWN CODE PERTAINING TO WATER & SEWER CONNECTIONS

WHEREAS, the Water & Sewer Policy was codified into Town Code Chapter 134-1 by Council on June 25, 2012; and,

WHEREAS, the area defined as the Rt 522 Corridor for purposes of exemption from the Out-of-Town utility provision moratorium was based upon the original 1998 Corridor Agreement; and,

WHEREAS, the 1999 Amendment to the original 1998 Corridor Agreement expanded the area designated as the Rt 522 Corridor designated for utility provision; and,

NOW, THEREFORE, BE IT ENACTED by the Town Council of the town of Front Royal, Virginia that Chapter 134-1 of the Front Royal Town Code is hereby amended as follows:

134-1 Connections

D. Extension Moratorium Areas

Recognizing demonstrated service issues in providing utility service to certain areas within Warren County, a moratorium of utility connections and extensions to all undeveloped properties or lots not served by Town utilities as of the date of adoption of this Code Section is established that shall require sufficient studies and modeling prior to the Town's consideration of additional connections or extensions with the exception of:

1. Property zoned commercial or industrial that is currently located within the Rt. 522 Corridor ~~located~~ ~~*to the east of Rt. 522, south of Fairground Road, west of the Norfolk and Southern Railroad and north of Country Club Road*~~ *as defined in that "Amendment to an Agreement Between the County of Warren and the Town of Front Royal Regarding the Provision of Water and Sewer Service by the Town in the U.S. Route 522/340 North Corridor and the Assumption of Full Funding and Responsibility by the County of Fire/Rescue, Parks/Recreation Operations, and Animal Control Services" dated August 9, 1999 entered into between the Town of Front Royal, Virginia, and County of Warren, Virginia as both sides of U.S. Routes 522/340 North of the Town of Front Royal, extending to Crooked Run on the West, the Norfolk Southern Railroad tracks on the East, and Fairground Road (SR 661) to the North*;
2. Blue Ridge Shadows Subdivision as platted on November 26, 2012;
3. McKay Property jointly owned by the Town and County as platted on November 26, 2012;
4. Henselstone Subdivision as platted on November 26, 2012
5. Guard Hill Road parcels located within 100' of the existing water main on November 26, 2012
6. Harmony Hollow Road parcels located within 100' of the existing water main on November 26, 2012

This ordinance shall become effective immediately.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted 12-10- 2012, upon the following recorded vote:

Thomas H. Sayre	Yes/No	Bret W. Hrbek	Yes/No
Hollis L. Tharpe	Yes/No	Eugene R. Tewalt	Yes/No
N. Shae Parker	Yes/No	Daryl L. Funk	Abstained ~~Yes/No~~

A public hearing on the above was held on 11-26 ,2012 having been advertised in the Northern Virginia Daily on 11-10 ,2012 and 11-17 ,2012. The Ordinance was enacted at the Regular Meeting of the Town Council held 12-10- 2012.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: 12 / 15 / 2012

EXCERPT FROM June 11, 2012 COUNCIL MEETING MINUTES

PUBLIC HEARING – An Ordinance to Amend/ReEnact Section 134-1 of the Town Code Pertaining to Water and Sewer Connections *(1st Reading)*

Vice Mayor Holloway opened the public hearing. As no one came forward to speak, he closed the public hearing.

Councilman Parker moved, seconded by Councilman Tharpe, that Council affirm on its first reading an ordinance to amend and re-enact Section 134-1 of the Front Royal Town Code pertaining to Water and Sewer Connections, as presented.

Councilman Parker noted that by amending the Town Code section they would be codifying the Water & Sewer Policy. He added that Council discussed the matter intently in January and adjusted the former policy to some degree. Mr. Parker noted that the Council would have a firm number that the County and the EDA can use for surplus water planning in the future and the policy would be reviewed at least on an annual basis.

Councilman Sayre noted that the Council had a previous water policy and it was well written.

Vote: Yes – Conkey, Holloway, Lauder, Parker, Sayre and Tharpe

No – N/A

Abstain – N/A

Absent – Darr

(By Roll Call)

EXCERPT FROM June 25, 2012 COUNCI MEETING MINUTES

COUNCIL APPROVAL – An Ordinance to Amend/Re-enact Section 134-1 of the Town Code Pertaining to Water and Sewer Connections ***(2nd Reading)***

Vice Mayor Holloway moved, seconded by Councilman Tharpe, that Council adopt on its second and final reading an ordinance to amend and re-enact Section 143-1 of the Front Royal Town Code pertaining to Water & Sewer Connections, as presented.

Vote: Yes – Conkey, Holloway, Lauder, Parker, Sayre and Tharpe

No – N/A

Abstain – N/A

Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)

(By Roll Call)

EXCERPT FROM November 26, 2012 COUNCIL MEETING

PUBLIC HEARING: Amendments to Section 134-1 D, Extension Moratorium Areas, Pertaining to Water and Sewer Connections *(1st Reading)*

Councilman Funk made the following disclosure for the record:

> Based on an opinion from the Town Attorney, I elect to disqualify myself from participating in item 9 of tonight's agenda, regarding Section 134-1 "Connections: Defining Exemption Areas". My law firm represents businesses and/or individuals in the affected areas. It is my understanding that the Code of Professional responsibility governing ethical conduct among attorneys will not allow me to disclose the names and addresses of those clients of my firm because to do so would cause me to breach my duty of confidentiality towards those clients. However, that information will be revealed in accordance with a lawful judicial directive. Thank you.

Mayor Darr opened the public hearing. As no one came forward to speak, he closed the public hearing.

Vice Mayor Parker moved, seconded by Councilman Tharpe, that Council affirm on its first reading Amendments to Town Code Section 134.1-D, Extension Moratorium Areas, pertaining to Water & Sewer Connections as presented.

Vote: Yes – Hrbek, Parker, Tewalt and Tharpe

No – Sayre

Abstain – Funk

Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)

(By Roll Call)

EXCERPT FROM December 10, 2012 COUNCIL MEETING

COUNCIL APPROVAL: Amendments to Section 134-1 D, Extension Moratorium Areas, Pertaining to Water & Sewer Connections ***(2nd Reading)***

Councilman Funk made the following disclosure for the record:

Based on an opinion from the Town Attorney, I elect to disqualify myself from participating in item 8 of tonight's agenda, regarding amendments Section 134-1 "Connections: Defining Exemption Areas". My law firm represents businesses and/or individuals in the affected areas. It is my understanding that the Code of Professional responsibility governing ethical conduct among attorneys will not allow me to disclose the names and addresses of those clients of my firm because to do so would cause me to breach my duty of confidentiality towards those clients. However, that information will be revealed in accordance with a lawful judicial directive. Thank you.

Vice Mayor Parker moved, seconded by Councilman Tharpe, that Council adopt on its second and final reading, Amendments to Town Code Section 134-1 D, Extension moratorium Areas, pertaining to Water & Sewer Connections as presented.

Vote: Yes – Hrbek, Parker, Tewalt and Tharpe

No – Sayre

Abstain – Funk

Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)

(By Roll Call)